IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.1.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.1007 of 1990
and Tr.A.S.No.503 of 1991

A.S.1007/1990

1. S.Kasinathan
2. Santha
3. Nagavalli .. Appellants/ Plaintiffs 1 to 3 1 to 3

-Vs-

1. Jagadeesan
2. Vijayalakshmi
3. Parvathy
4. Kamalammal (died)
5. R.Jagadeesan .. Respondents/Defendants 1 to 5 1 to 5

RR 1 to 3 recorded as LRs of the deceased R4 as per order of court dated 24.11.95 in C.M.P.3874/94

Tr.A.S.No.503 of 1991

1. Shanmugham Pillai
2. Kasinathan ..Appellants/Defendants 1 & 2

-Vs-

1.Kamalammal
2.Jagadeesan
3.Kuppan Mandiri ..Respondents/Plaintiffs 1 & 2 and 3rd defendant

Prayer in A.S.1007/1990:- Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 30.6.1986 made in O.S.No.58 of 1983 on the file of the Additional Subordinate judge of Vellore.

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Prayer in Tr.A.S.No.503 of 1991

Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 30.6.1989 made in O.S.No.364 of 1987 on the file of the Subordinate judge of Vellore.

For Appellants : Mr.S.Parthasarathy, Senior Counsel for Mr.N.Damodaran

For Respondents 1,2 & 5: Ms.N.Mala for M/S.M.S.Umapathy

Respondent – 3 : No Appearance

JUDGMENT

These appeals are against the common judgment dated 30.06.89 in O.S.Nos.58 of 1983 and 364 of 1987 on the file of Additional Sub Court Vellore in and by which the learned Sub Judge dismissed a part of the claim in O.S.No.58 of 83 while decreeing the suit in O.S.364 of 1987. Since the issues involved in both the suits were common, both the suits were tried together and common judgment rendered by the lower Court. The fourth and first defendant in O.S.58 of 1983 are the plaintiffs in O.S.409 of 1988.

2. The first plaintiff in O.S.58/83 is the second defendant in O.S.409 of 1983. For convenience, the parties are referred as arrayed in the suit in O.S.No.58 of 83.

3. The Plaintiffs state as follows:-

3.1. Plaintiffs Nos. 1 and 2 are the son and daughter of Subramania Pillai and the 3rd plaintiff is the widow of Subramania Pillai. Subramania Pillai died in January, 1969 leaving behind the plaintiffs as his legal representatives to succeed his properties.

3.2. Subramania Pillai father of plaintiffs 1 and 2, the first defendant and one Shanmugham Pillai are the sons of Anna Pillai. They constitute Hindu undivided joint family. Shanmugham Pillai executed a registered release deed about 15 years back and got separated from the joint family. He is no more a member of the joint family. Therefore the father, Anna Pillai along with his two sons Subramania Pillai and the first defendant constitute Hindu undivided joint family. The suit properties belong to the said joint family consisting of the father and the two sons. After the death of Subramania Pillai and the plaintiffs have become the members of the joint family. Anna Pillai died intestate on 6.7.75 leaving behind the 4th defendant his widow, two daughters the defendants 2 and 3, the first defendant and the plaintiffs to succeed the suit properties. The suit properties are the ancestral co-parcenery and joint family properties of the plaintiffs and the first defendant. After the death of Anna Pillai the first plaintiff and the first defendant have

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been enjoying the suit properties. The suit properties have not been divided so far between the members of the joint family.

3.3 They are entitled to 6/15th share, the first defendant is entitled to 6/15th share and the defendants Nos.2 to 4 are entitled to 1/15th share each in the suit properties. The properties have to be divided as per the above shares.

3.4. The first defendant attempted to alienate an undivided portion of the land bearing S.No.410/1 to the fifth defendant. Therefore the plaintiffs issued a lawyer's notice to the first defendant and the fifth defendant's father dated 6.2.1983 calling upon the first defendant to divide the suit properties and also warning the 5th defendant not to purchase any undivided portion of the joint family property. In spite of the notice, the 5th defendant had purchased 1/4th undivided share in S.NO.410/1 of the suit properties. The house bearing Door No.39, Avalkara Street, Vellore was purchased by Anna Pillai out of the income from the joint family properties. He had no independent means to purchase the abovesaid properties. Therefore item Nos.18 of the suit properties is the joint family property in which the plaintiffs are entitled to a share. Anna Pillai had no right to execute any settlement deed in favour of the 3rd defendant in respect of the said house. The settlement deed in favour of Parvathi ammal alleged to have been executed by Anna Pillai is not true valid and binding upon the plaintiffs. It is void abinitio. Hence the suit.

4 Written statement of D1 to D4 states as follows:-

4.1. The plaint items 1 to 4, 9 to 12 southern half of item No.14 and item No.16 are the separate properties of one Ponnuswamy Pillai. The said Ponnuswamy got the same for his share under the registered partition deed dated 16.9.1990 between himself and his brother's son Sundaram Pillai. He had no male issues and so he executed a registered will dated 29.11.1918 while he was in a sound state of mind bequeathing the said properties to his daughter Muniyathammal and to his only grand daughter Apuroopammal alias Devanai ammal to be enjoyed by them for their life time and reminder absolutely to his grand-son Anna Pillai. The said will was executed by Ponnuswamy pillai voluntarily out of love and affection.

4.2. After the death of Ponnuswamy Pillai, as per terms of the will Muniyathammal and Apruroopammal alias Devanai ammal enjoyed the said properties and after their death, Anna pillai, the father of first defendant became absolute owner of the same. He was in possession and enjoyment of the said property in his own right and treated the same as his separate properties.

4.3. During the life time of Anna pillai, he out of his own free will and love and affection, and in a sound disposing state of mind executed a registered will on 15.12.1962 in favour of his wife Kamallammal, the fourth defendant to be enjoyed for her life time and remainder absolutely to his son Jagadeesan, the first defendant. After the death of Anna pillai in the year 1975, the fourth defendant Kamalammal as per terms of the Will is in possession and enjoyment of the aforesaid properties. After her life time, the properties has to be enjoyed by the first defendant as per Will dated 15.12.1962. The plaintiffs or other

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defendants have no manner of right or title over the aforesaid items of properties. Hence the plaint suit items 1 to 4, 9 to 12, 16 and southern half of item No.14 cannot be divided, as the same are not joint family properties, available for partition.

4.4. The plaint item No.18 was acquired by Anna pillai from his own funds and the same was his separate and self acquired property. The said item No.18 is not the joint family property and not available for partition. The said item No.18 was settled by Anna pillai in favour of his daughter, the 3rd defendant- Parvathi ammal for her life time and remainder absolutely to her issues, under the registered Settlement deed dated 27.5.1963. Thus the said item belonged to Parvathi ammal, namely the 3rd defendant and her issues, and she is in possession and enjoyment of the same.

4.5. Anna pillai said to have agreed to sell the land No.431/1 and 432/3 to one Krishna mandiri. On the basis of the said alleged agreement Krishna Mandiri filed the suit O.S.No.154/1968 on the file of this Court, for specific performance and the same was decreed. The matter is now pending in the High Court, Madras. So, before the disposal of the said matter, the property cannot be divided. The plaintiffs are themselves well aware of these facts. The plaint items 6 and 7 are wrongly described and there is no such item belonging to the family. So the same are not available for partition.

4.6. The 1/4th share in the house bearing door No.30 Katta Subedr Street, described as Item No.17, and 1/4th share in item No.13 belonging to Shanmugham pillai were brought to sale by his creditor in court auction and this had happened before the execution of the Release deed by Shanmugham Pillai. In the said court auction sale, in E.P.483 of 1962 in Osc.No.803 of 60 on the file of Vellore District Munsif's Court, the first defendant purchased the share of Shanmugham pillai in the said aforesaid items on 23.1.1963, and also taken possession of the same through court on 12.7.1963. Thus the first defendant became the owner of 1/4th share in the said items 17 and 13 and another 1/4th share in each of the said items by birth. After the death of Anna pillai the share of Anna pillai devolved upon his heirs including these defendants. Thus, the first defendant is entitled to 11/20th share. The plaintiffs put together 6/20th share and defendants 2 to 4 each entitled to 1/20th share in the aforesaid items 17 and 13.

4.7. In suit items 5 and 8 the plaintiffs are entitled to 8/15th share, first plaintiff is entitled to 6/15th share and the remaining defendants 2 to 4 1/15th share each.

4.8. Anna pillai has got every right to settle the suit item No.18 to 3rd defendant as the same, is, his separatee and self acquired property. Hence, the settlement deed dated 27.5.1963 in favour of 3rd defendant is valid and binding on the plaintiffs.

4.9. It is true a part of item No.13 was sold by the first defendant to the 5th defendant. But the plaintiffs have no right to question the same as they have no right, title and interest over the same.

4.10. The properties available for partition are, items 5, 8 part of item 13, 17 and northern of item No.14. Item No.15 is, his separate

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property of 1st defendant, as the same was purchased in individual capacity under the sale deed dated 27.1.1980 from one Ponnuswamy Udayar and others. The plaintiffs are barred by principles of Resjudicate as the validity and the execution of the document dated 27.11.1918 and settlement deed dated 16.12.1962 have been upheld in the suit between the plaintiffs and defendants 1 to 4 herein in O.S.No.609 of 74 on the file of District Munsif's Court, Vellore. Even though the plaintiffs and defendants 1 to 4 herein are defendants in the said suit O.S.609 of 74 the judgment rendered in the said suit, will operate as Resjudicata. Hence the plaintiffs cannot once again agitate the validity and execution of the said documents dated 27.11.1918 and 16.12.1962, as they are estopped from questioning the same and also barred by principles of Resjudicata. Hence, the suit is liable to be dismissed.

4.11. Fifth defendant states as follows:- To the knowledge of the defendant, 2.09 acres out of 4.16 acres of land in S.No.410/1 of Moonjurpet village which is item No.13 of the suit properties was the absolute property of the first defendant Thiru.A.Jagadeesan. The defendant purchased 1.04 acres of land from the first defendant in document No.651 of 1983 dated 17.2.1983 for a valid consideration of Rs.28,000/- after verifying from documents and oral enquiry. To the knowledge of the defendant, the first defendant got 1/4th of this property as his share and the 1/4th share of his brother Shanmuga Pillai was also purchased by him through court on 23.1.1963 when it was brought to sale by the creditor one Chockalinga Pillai in E.P.483/62 in O.S.803/60 of the file of this Hon'ble Court. The first defendant was enjoying the half of the entire 4.16 acres of the property for more than 20 years and perfected title by adverse possession also. The 1.04 acres of land purchased by this defendant was delivered possession to him on the date of purchase and he has been in possession of the same from 17.2.1983. Hence, the suit is liable to be dismissed.

5. The plaintiff in O.S.409 of 1983 states as follows:-

5.1. The plaint pleading in this suit and the written pleadings of the 4th and 1st defendant in O.S.58/83 are one and the same. In pursuance of the pleadings, plaintiff sought relief in this suit for declaration of the life interest of the first plaintiff over the suit property and vested remainders of the second plaintiff over the suit properties.

6. The written statement of the 2nd defendant adopted by D1 and D3 are as follows:-

6.1. The second defendant herein is none other than the first plaintiff in O.S.58 of 83, the second defendant reiterated his pleadings in O.S.No.58 of 83 in the written statement. It reads as follows:-

6.2. The suit properties are the joint family properties of Anna Pillai and his sons. Ponnusamy Pillai had no right to execute the Will dated 27.11.1918 and he had no mental capacity ability or mind to execute the said will dated 27.11.1918. Obviously the said Will must have been created for obvious reasons. Anna pillai succeeded the suit properties as heir of Ponnusamy pillai and not by virtue of the Will dated 27.11.1918.

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He succeeded to the suit properties by survivorship.

6.3. The Settlement dated 16.12.1962 is not true valid and binding on the defendant. Anna pillai had no right ability capacity or mind to execute the said Settlement dated 16.12.1962. Further the suit property are joint family properties and therefore the alleged settlement even if true is not valid and binding upon this defendant.

6.4. Anna pillai died in the year 1975. Subramania Pillai, Shanmughampillai and the second plaintiff are his sons. 1st plaintiff is the widow of Anna pillai. Subramania pillai predeceased his father in the year 1968 leaving behind his widow Nagavalli, son the second defendant and Santha his daughter. Shanmugam pillai already executed a release deed and therefore he is not a member of a joint family. Any admission made by the first defendant is not binding upon this defendant. After the death of Anna pillai this defendant and the second plaintiff constitute undivided joint family and the suit properties belong to the said joint family. Anna pillai died leaving behind his widow kamalammal two daughters Parvathi and Vijayalakshmi. The suit properties and other properties are joint family properties in which the defendant is entitled to 6/15th share, the 2nd plaintiff is entitled to 6/15th share. The 1st plaintiff, Parvathi and Vijayalakshmi are entitled to 1/15th share each.

6.5. The second defendant and the second plaintiff are members of Hindu undivided joint family. Therefore, the suit is liable to be dismissed.

6.6. The 1st plaintiff in O.S.58/83 examined as P.W.1. One Shanmugam examined as P.W.2. Exhibits A.1 to A.4 were marked on the side of the plaintiff to prove the claim. Defendants 4,3, 1 and 5 were examined as D.W.1 to D.W.4 respectively. Exhibits B.1 to B.20 were marked on the side of the defendants to confront the claim of the plaintiff.

6.7. The Schedule of properties in O.S.No.364 of 1987 included in the schedule of property in O.S.No.58 of 83. The plaintiff in O.S.No.364 of 1987 claim absolute right in respect of the properties referred in the plaint which is included in the Schedule of properties in O.s.58 of 1983.

6.8. Whereas the plaintiffs in O.S.58 of 1983 claim partition in entirety with reference to suit property.

7. The lower court after analysisng the evidence in depth found that the plaintiff in O.S.364 of 1987 entitled to suit claim and accordingly decreed the suit in entirety as prayed for. However, the lower court decreed the partition suit in O.S.58/83 in part excluding the properties referred in O.S.364 of 1987. The present suit is filed by the aggrieved party against such finding.

8. Heard Mr. S.Parthasarathy learned counsel for the appellant and Ms.N.Mala learned counsel for the respondents 2 and 5.

9. Upon hearing the rival claims, the points for determination are :-
Points:

1) Whether the partition deed dated 15.9.1900 entered into between Ponnusamy Pillai and Sundaram Pillai is valid and binding on the

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parties to the proceedings?

2) Whether the settlement deed dated 27.11.1918 executed by one Ponnusamy pillai in favour of Munithai Ammal and Aburoobammal for life interest and thereafter absolute right in favour of one Anna Pillai is valid and binding on the parties to the proceedings?
3) Whether the settlement deed dated 16.12.1962 executed by late Anna pillai in favour of Defendants 1 and 4 is valid and binding on the plaintiff?(O.S.No.58 of 83)
4) Whether the suit is barred by the principle of resjudicata in view of the earlier finding rendered in O.S.No.609 of 1974 dated 24.02.1976 against the plaintiff?(O.S.58 of 83)
5) Whether the finding of the lower court in decreeing the suit in entirety in o.S.No.364 of 1987 is in order?
6) Whether the finding of the lower court in dismissing the suit in O.S.No. 58 of 1983 in part, in view of the finding rendered in O.S.No.364 of 1987 is in order?

Points 1,2 and 3:

It is the specific case of the plaintiff in O.S.No.58 of 1983 that the entire property was the joint family property and that his father Anna Pillai died intestate, through him, the suit property devolves upon the plaintiffs and the defendants and therefore, the plaintiffs are entitled to 6/15 share in the suit property. Whereas, the defendants would contend that the entire suit property referable to Suit in O.S.No.364 of 1987 included in the suit property in O.S.No.58 of 1983 was the absolute property of Anna Pillai in pursuance of the documents dated 15.9.1900 and 27.11.1918 and that the said Anna Pillai settled the properties referable to O.S.No. 364 of 1987 in favour of the first defendant and fourth defendant as per document dated 16.12.1962 and as such, the plaintiff has no right over the same.

10. The rival contentions have been considered in detail:

10.1. The materials on record would show that ponnusamy Pillai and Sundaram Pillai, who were brothers, partitioned their ancestral property by virtue of the partition deed dated 15.9.1900. The said document was marked as Ex.B4. Through the said document, Sundaram Pillai got absolute right over the property referable to suit in O.S.No.364 of 1987.

10.2. Thereafter, by virtue of the settlement deed dated 27.11.1918 executed by the said Ponnusamy Pillai, the said late Anna Pillai become the absolute owner of the properties of the said Ponnusamy Pillai, which is referable to the disputed property. The said settlement deed is marked as Ex.B6. The said Anna Pillai has got three sons namely Subramaniam Pillai, Jegadeesan Pillai (first defendant) and Shanmugam Pillai. The second and third defendants are the daughters of Anna Pillai. The fourth defendant is the widow of Anna Pillai.

10.3. The said Subramaniam Pillai died in the year 1969 leaving behind the plaintiffs as his son, daughter and wife. Later, the said late Anna Pillai by virtue of the document dated 16.12.62, settled the properties referred therein in favour of defendants 1 and 4. Ex.B7 is the

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settlement deed dated 16.12.1962. Even according to the plaint pleadings, Shanmugam Pillai was the one of the sons of Anna Pillai, released his right in respect of the ancestral property and left the family long time back. Now, the dispute is between the heirs of Subramaniam Pillai and Jegadeesan Pillai, who are the sons of late Anna Pillai.

10.4. In this context, it is useful to refer the earlier litigation between the creditors of Subramaniam Pillai on one side and the heirs of Subramaniam Pilla and Jegadeesan Pillai (first defendant) on the other side. The Judgment Copy in O.S.No. 609 of 1974 is marked as Ex.B3. The Judgment is dated 24.02.1976. The genuineness of this decree was not questioned by the plaintiff. In the said suit, the plaintiffs namely Kasinathan, Santha and Nagavalli were the defendants 4 to 6. Similarly, the first defendant and the fourth defendant, namely, Jegadeesan and Kamalammal in O.S.No.58 of 1983, were the defendants 3 and 9 in the said suit. In the said suit, defendants 8 and 9 filed the written statement adopted by the defendants 3 to 7.

10.5. The written statement of D3 to D7 adopted by defendants 8 and 9 in O.S.609 of 1974 reads as follows:-

"The averments contained in the written statement of the defendants 8 and 9 adopted by the defendants 3 to 7 who are legal representatives of the deceased first defendant are as follows:-

> The second defendant is a divided member of the family under the partition or release deed dated 5.9.1964. Therefore, the plaintiff is not entitled to proceed against the joint family properties in which the judgment-debtor has no interest. The first item is the self-acquisition of the first defendant which he had settled in favour of the 8th defendant on 27.5.1963. As regards item No.2, the second defendant was not a joint family co-parcener from the date 5.9.1964. The first defendant had executed a Will dated 15.12.1962 bequeathing his right in second item in favour of the 9th defendant till her life time and thereafter to the third defendant. Therefore, both items cannot be attached. The debt contracted by the second defendant is not in his capacity as joint family manager or for benefit of the joint family. After he had released his right in the joint family properties on 5.9.1964 by a valid and true document, he has no right or interest in the suit properties. "

10.5.1. M/s.Jagadeesan, Nagavalliammal, Kasinathan, Santhakumar and Vijayalakshmiammal who are defendants 3 to 7 in O.S.609 of 1974 are parties to the suit. Similarly M/s.Parvathiammal and Kamalammal who are the defendants 8 and 9 and the legal representative of first defendant late S.Anna pillai in O.S.609 of 1974 are parties to the suit.

10.5.2. It is specifically stated in the written statement in O.S.609 of 1972 that the second defendant viz., M.A.Shanmugham is a divided member of the family under the partition dated 5.9.1964. It is also specifically stated that the property in the said suit is the self acquisition of the first defendant viz., late S.Anna pillai, which he had settled in favour of the eighth defendant viz., Parvathiammal on 27.5.1963. It is also

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specifically averred that the first defendant viz., S.Anna pillai had executed settlement dated 16.12.1962 bequeathing his right in second item in favour of the ninth defendant viz., Kamalammal till her life time and thereafter to the third defendant viz., Jagadeesan. It is also further averred in the said suit that the debt contracted by the second defendant viz., Shanmugham not in his capacity as joint family manager or for benefit of the joint family as he had released his right in the joint family properties on 5.9.1964 by a valid and true document.

10.5.3. The first defendant in that suit viz., late S.Anna pillai has filed a written statement contending that the release deed executed by the second defendant viz., M.A.Shanmugham relinquishing his right in respect of the disputed property is true and valid and acted upon. He further stated that his daughter is in occupation of the first item of the schedule properties while item No.2 is in his occupation. The second defendant viz., M.A.Shanmugham in that suit has not filed any written statement confronting the claim of the defendants in the said suit. In fact in the said suit, issues were framed with reference to the validity and genuineness of the documents viz., (1)27.5.1963 (2)5.9.1964 (3) 16.12.1962 and answered accordingly.

10.6. It is proved that the plaintiffs in O.S.No.58 of 1983 are the defendants 4 to 6 in the said suit. Similarly, defendants 1 and 4 in O.S.No. 58 of 1983 are the defendants 3 and 9 in the said suit. In both the suits, the rival claims is between Kasinathan, Santha and Nagavalli on one side and Jegadeesan and Kamalammal, who were the son and widow of late Anna pillai on the other side. In the said suit, the defendants admitted that the disputed property in O.S.No.364 of 1987 were the absolute property of late Anna pillai and that no one has got a share over the same. If that be so, the plaintiffs in O.S.No.58 of 1983 cannot now allege that the disputed property is not the absolute property of late Anna Pillai. In fact, the documents referable to these issues were taken note of by the said Court and rendered finding accordingly. Even otherwise, the first defendant in his evidence stated that the entire disputed property was not the absolute property of the Sundaram Pillai and that the same was settled by late ponnusamy pillai in favour of late Anna Pillai. The narration of events would show that the properties referable to Ex.B7 is the absolute property of late Anna Pillai and that the said late Anna Pillai had alienable right over the same, which right has been devolved upon the defendants 1 to 4 by virtue of the settlement deed dated 16.12.1962. The said document is marked as Ex.B7. So, by the admission of the first plaintiff in his evidence coupled with the finding of the Court in the earlier proceedings which is marked as Ex.B3, I am satisfied that the said settlement deed dated 16.12.1962 executed by late Anna Pillai in favour of the defendants 1 and 4 is valid and binding on the plaintiffs.

10.7. The lower Court in fact dealt this point in detail. I am satisfied that the lower Court has rightly come to the conclusion that the documents related to these issues are valid and binding on the plaintiffs. I do not find any illegality or impropriety in the findings of the lower

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Court. The findings of the lower Court is in order; does not require any interference and hence these issues are answered against the appellants/plaintiffs.

Point No.4:

The plaintiff in the earlier proceedings in O.S.No. 609 of 1974 admitted that late Anna Pillai has got absolute right over the property referable to document namely Ex.B7. The learned counsel for the appellants/plaintiffs submitted that the documents marked in this case referable to the said issues were not original and that the finding of the lower Court relying on the copy of the document cannot have any legal sanctity and therefore, the principle of res judicata is not applicable to the case on hand. The submission of the learned counsel for the appellants/plaintiffs has no merit in view of the fact that all the original documents were filed in the earlier proceedings, which fact was not disputed by the appellants/plaintiffs. Moreover, the said documents are registered documents. Apart from that, the attesting witness of the Will died long back.

11. The law on this subject is found in Sec.47 and 67 to 69 of the Indian Evidence Act. Section 67 of the Evidence Act requires that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting must be proved to be in his handwriting. Section 47 of the Evidence Act makes relevant the opinion of any person acquainted with the handwriting of the person by whom the document is supposed to be written or signed that it was or was not written or signed by that person.

12. Section 68 of the Evidence Act requires that in order to prove a document required by law to be attested, at least one attesting witness should be called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. The proviso contains an exception and excludes a document not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, unless its execution is specifically denied.

13. A Will, even if registered, falls under the main Section, as it is excluded from the purview of the proviso. Section 69 of the Evidence Act provides that if no attesting witness can be found, it must be proved that the attestation of at least one attesting witness is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. Thus, Section 69 of the Evidence Act requires proof of (1) the signature of at least one witness, and (2) the signature of the person executing the document. It is not necessary, however, for the purpose of Section 69 of the Evidence Act that the same witness must prove the signature of the attesting witness and also the signature of the executant. The two requirements can be satisfied by two independent witnesses.

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14. The case on hand would show that the testatrix died on 6.7.1975. Similarly, the attesting witness of the Will had died long time back. There is no dispute regarding this aspect. Apart from that, the said documents are registered documents. Unless, a definite case is pleaded by the disputing party that somebody was interested in impersonating the testatrix as early as in the year 1918 and getting a Will registered as if it was a Will, the Court is not entitled to make surmises and assume anything contrary to the document. The Court is bound to apply the presumption under Section 114 of the Evidence Act and hold that the Will was presented for registration by its executant and registered properly in accordance with law. The plea of any kind of undue influence or coercion cannot stand scrutiny for a moment. There is not even a plea that the testatrix was of week intellect so as to be influenced unduly by another person. It is too much to say that the undue influence or coercion continued for several decades and the testatrix had no opportunity to change the Will during his life time. The undisputed fact is that the disputed property is the absolute property of late Anna Pillai on the own saying of the plaintiff in the earlier proceedings.

15. The principles laid down in the decisions reported in

1.1992(2) L.W. Page 523, the case of JAYALAKSHMI AMMAL ..VS.. K.LAKSHMI IYENGAR REPRESENTED BY POWER AGENT M.JAYARAM IYER;
2. 53 M.L.J. 216;
3. I.L.R.39 Allahabad 112;
4. and39 L.W. 571 A.I.R.1934 Madras 360.
explains the above proposition.

16. The plaintiffs were parties to the proceedings in the earlier suit, which fact is proved by virtue of the document marked as Ex.B3. Though, the plaintiffs state that they were not parties to the earlier proceedings and as such, the findings rendered in earlier proceedings is not binding on them, in the course of arguments, they have given up this plea. So, the findings rendered in the earlier proceedings is binding on the parties to the present suit. The plaintiffs, in fact, admitted the genuineness of the said documents under dispute in this case in the earlier proceedings. Only on that basis, the said documents were declared to be valid in the earlier proceedings. In such view of the fact, the plaintiffs cannot now plead that the said documents are not binding on them, as the principle of res judicata is applicable to the case on hand, in the light of the principle laid down in the Judgment reported in 1984 (2) M.L.J. Page 432 in the case of Ramaswami Panipoondar vs. Mani. From the narration of events, I am satisfied that the principle of res judicata is applicable to this case on hand and therefore, the plaintiff cannot dispute the genuineness of documents which are in favour of the defendants. Hence, I answer this point against the appellants/plaintiffs.

Points 5 & 6:

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The lower Court has analysed the points referable to issues 1 to 4 and rightly came to the conclusion that the plaintiffs cannot have a claim over the property referable to O.S.No.364 of 1987 and accordingly rendered findings in both the suits. I do not find any illegality or impropriety in the findings of the Court below in respect of the said suits. The findings of the lower Court in respect of both the suits are in order and does not require any interference. Hence, these issues are answered against the appellants/plaintiffs.

17. In the result, both the appeals fail and accordingly dismissed. The parties are directed to bear their respective costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nvsri/mra

To
1. The Additional Subordinate Court, Vellore.[with records]
2. The Subordinate Judge, Vellore.
3. The Record Keeper, VR Section, High Court, Madras.

A.S.No.1007/1990
and Tr.As.503/1991

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